

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 22-CR-20114-KMW**

UNITED STATES OF AMERICA

vs.

CARLOS RAMON POLIT FAGGIONI

Defendant.

**NOTICE OF FOREIGN LAW DETERMINATION
PURSUANT TO FED. R. CRIM. P. 26.1**

The United States of America respectfully submits this notice of an issue of foreign law pursuant to Fed. R. Crim. P. 26.1.¹

On March 24, 2022, a federal grand jury in the Southern District of Florida returned an Indictment charging the defendant with one count of conspiracy to commit money laundering (18 U.S.C. § 1956(h)), three counts of money laundering (18 U.S.C. § 1956(a)(1)(B)), and two counts of engaging in transactions in criminally derived property (18 U.S.C. § 1957). [DE 1]. The specified unlawful act underlying the money laundering charges is an offense against a foreign nation, specifically Ecuador, involving bribery of a public official and the misappropriation, theft,

¹ Federal Rule of Criminal Procedure 26.1 provides that

[a] party intending to raise an issue of foreign law must provide the court and all parties with reasonable written notice. Issues of foreign law are questions of law, but in deciding such issues a court may consider any relevant material or source — including testimony — without regard to the Federal Rules of Evidence.

Fed. R. Crim. P. 26.1; *see United States v. Kozeny*, 582 F. Supp. 2d 535, 538 (S.D.N.Y. 2008) (“Though foreign law once was treated as an issue of fact, it now is viewed as a question of law and may be determined through the use of any relevant source, including expert testimony.”); *United States v. Mitchell*, 985 F.2d 1275, 1280 (4th Cir. 1993) (“The determination of foreign law is a question of law to be established by any relevant source, whether or not submitted by a party or admissible under the Federal Rules of Evidence.”).

and embezzlement of public funds by or for the benefit of a public official. [*See id.* at 4].

The government provides notice that it intends to offer evidence during trial of the specified unlawful activity charged in the Indictment: an offense against a foreign nation, specifically Ecuador, involving bribery of a public official, and the misappropriation, theft, and embezzlement of public funds by or for the benefit of a public official, in violation of Article 286 of Ecuador's 1971 Penal Code and Article 280 of Ecuador's 2014 Penal Code.

On February 2, 2024, the government provided notice to the defendant of an expert on the laws of Ecuador, Professor Keith S. Rosenn and produced Professor Rosenn's declaration regarding the elements of Article 280 and Article 286, as well as his CV. Professor Rosenn's declaration, CV, and translations of the relevant Ecuadorian statutes prepared by Professor Rosenn are attached as Exhibit 1. As of the date of this filing, the defendant has not noticed any expert witness.

Based on Professor Rosenn's declaration, the government has prepared a proposed jury instruction addressing Articles 280 and 286 of the Ecuadorian Penal Code, attached as Exhibit 2.²

Respectfully submitted,

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² On March 14, 2024, the parties met and conferred, and the government understands that the defendant will be filing an alternate proposed jury instruction regarding the Ecuadorian law SUA.

GLENN LEON
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed with the Court's CM/ECF system on March 15, 2024.

By: s/Michael N. Berger
Michael N. Berger
Assistant United States Attorney